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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 3RD DAY OF APRIL 1998

BEFORE

THE HON'BLE MR. JUSTICE H.N.NARAYAN

CIVIL REVISION PETITION NO. 3695/1997

BETWEEN:

Sri Vittal s/o Murigeppa
Uppaldinni, Age:52 yrs,
Occ:Agril, r/o Mahaligapur,
Tq:Mudhol, Dist:Bagalkot.

PETITIONER

(By Sri I.G.Gachchinamath, adv.,)

AND:

Sri.Sangappa s/o Murigeppa
Uppaladinni, major,
Occ:Agril, r/c Mahaligapur,
Tq:Mudhol, Dist:Bagalkot.

RESPONDENT

(By Sri M.B.Nargund, adv.,)

This CRP is filed u/s 115 of CPC against the order dated 3.11.97 passed in M.A.No.15/97 on the file of the Prl. Civil Judge, Jamkhandi, allowing the appeal and setting aside the order passed in O.S.No.158/97 dated 21.7.97 by the Addl. Munsiff (Jr.DN.), Mudhol dismissing I.A.I filed u/o 39 R-1 & 2 of CPC.

This CRP coming on for admission this day, the Court made the following:-

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ORDER...

ORDER

The revision is directed against the divergent views expressed by the Courts below for holding a prima facie case in favour of the plaintiff. The dispute is in respect of right to take water from their own wells. The parties are full brothers. There was an admitted partition between them in the year 1976. The respondent herein who filed the suit for bare injunction, obtained an order of temporary injunction restraining the defendant, the petitioner herein from interfering with his right to take water from the two wells situated in his land bearing R.S.No.126/1A of Nandagaon village which measures 6 acres 16 guntas. It is the case of the plaintiff-respondent that there are two irrigation Wells situated in this Survey Number and that the plaintiff has been taking water from these Wells to irrigate his land. It is the further case of the plaintiff that the defendant, after partition purchased ~~XXXXXXX~~ land in R.S.No.126/1B measuring 2 acres 4 guntas and he has been in possession of the said land and that both the lands are adjacent. It is

undisputed that there is also an irrigation Well in the land of the petitioner -defendant in R.S. No.126/1B. The cause of action for filing the suit according to the plaintiff is that the defendant started obstructing him to take water from the second well situated in R.S.No.126/1A. The trial Court, having regard to the RTCs, P.T. Sheets issued by the Surveyor and the affidavits of the parties was of the opinion that the plaintiff has ^{not} proved prima facie case for grant of injunction which was not acceptable to the First Appellate Court and therefore the First Appellate Court has reversed the said order. The first ground on which the order of injunction has been granted by the first appellate court is that the trial Court has refused the order of injunction without considering the application for appointment of Commissioner whose report would have clarified the dispute before the Court. But from the submissions made before me by the

learned counsel appearing on both sides, there are no such serious questions to be decided by the Courts at all. They claim their separate rights in the two survey numbers which are adjacent. Plaintiff has got two irrigation Wells in his land and that the defendant has got one irrigation Well in his land. It is not the case of the parties that the disputed well is situated in the centre of their lands. There is a specific case made out by both of them that their wells are situated far away from the lands though the lands are adjacent. Learned counsel appearing on both sides submit that their clients do not claim any right in the well belonging to other party. But the allegation of the plaintiff is that the defendant is interfering with his right to take water from his well. Sri Gachchinamath, learned counsel for the petitioner specifically pleads that his client would not interfere with the plaintiff's enjoyment of

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the well situated in plaintiff's land. Since the Court is concerned only with the possession of the Wells by the plaintiff and not the defendant who is already before the Court for similar relief in a separate suit, he is now restrained from interfering in any manner with the plaintiff's enjoyment of his land or the well situated therein. We are not aware at this stage the purpose for which the parties have filed an application for appointment of Commissioner. If the parties want the commissioner to report the truth, then the Court must necessarily come to the conclusion or draw an inference that one of the parties is not speaking the truth before the Court. That is for the trial Court to decide after appointing a Commissioner. Therefore, the order of the first appellate Court is modified as follows:-

The defendant has now undertaken not to interfere with the two wells situated in the land of the plaintiff bearing Survey No.126/1A during the pendency of the suit. In view of the undertaking of the

respondent's counsel, plaintiff -respondent is restrained from interfering with defendant -petitioner's land bearing Survey No.126/1B. The trial Court shall hasten to appoint a Commissioner to locate the Wells situated in the lands of the plaintiff ~~and~~ defendant.

Sd/-
JUDGE

bkv